

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.04.2006

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THE HONOURABLE MR. JUSTICE N. PAUL VASANTHAKUMAR

W.P.No.1451 of 2006 & W.P.M.P.No.1642 of 2006

K. Manivannan

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Petitioner

Vs

The Chairman & Managing Director,
Chennai Port Trust,
Rajaji Salai, Chennai-1.

..

Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in proceedings No.CME/A1/2066/2002/EME dated 19.01.2006, quash the same and consequently reinstate the petitioner in service.

For Petitioner : Mr. M. Sureshkumar

For Respondent : Mr. M. Jagadeesan

ORDER

The prayer in this writ petition is to quash the order of termination dated 19.01.2006 issued by the respondent and reinstate the petitioner in service.

2. The brief facts necessary for the disposal of this writ petition is as follows:

(i) The petitioner belong to Hindu Sholaga Community which is a Scheduled Tribe community and the petitioner's name was sponsored through the Employment Exchange in the year 1980 for the post of Time Keeper in the respondent Port Trust and the petitioner was selected and appointed as Time Keeper on 17.09.1980 as a Scheduled Tribe candidate. The petitioner, at the time of joining, produced the Community Certificate dated 21.06.1980 issued by the Tahsildar, Mambalam-Guindy Taluk.

(ii) The petitioner service was confirmed after completion of his probation. The petitioner was given all promotions in time and in the year 2003, he was promoted as Administrative Officer and at the time of passing the impugned order, he was working as Administrative Officer.

According to the petitioner, the District Level Vigilance Committee, on 07.10.2005, conducted an enquiry with regard to the Community Certificate of the petitioner and passed an order on 30.11.2005 in which the petitioner's Community Certificate was cancelled. The said order of cancellation was signed by the Chairman of the District Level Vigilance Committee on 20.12.2005 and the same was served on the petitioner on 06.01.2006.

3. According to the learned counsel for the petitioner, in the order of the District Level Committee, thirty days time is given for filing Appeal before the State Level Committee after the receipt of the order. The petitioner having received the order on 06.01.2006, is provided a further time of 30 days for filing Appeal. Even as per the order of cancellation, the cancellation will take effect only after the expiry of 30 days for the service of the said order. The impugned order dated 19.01.2006, was passed by the respondent on the ground that the Community Certificate issued to the petitioner was cancelled by the District Level Vigilance Committee on 30.11.2005.

4. The learned counsel for the respondent submitted that the said order dated 30.11.2005 was communicated to the respondent through post on 06.01.2006 and postal cover is also produced before this Court. The learned counsel for the petitioner, therefore, submitted that before the expiry of the Appeal time, the petitioner's service is terminated on 19.01.2006 and the same is unsustainable in view of the provision of filing an Appeal before the State Level Vigilance Committee.

5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent. It is not in dispute that the order dated 30.11.2005 issued by the three member District Level Vigilance Committee was served on the petitioner as well as on the respondent only on 06.01.2006. Admittedly, 30 days time is given to the petitioner to file an Appeal against the order of the District Level Vigilance Committee. The impugned order of termination is passed on 19.01.2006, i.e., within 15 days from the date of service of the order of the District Level Vigilance Committee. It is well settled in law that Appeal is a continuation of the original Proceedings.

6. The learned counsel for the petitioner produced the Appeal Memo dated 20.03.2006, filed before the State Level Vigilance Committee and therefore, the said order of the District Level Vigilance Committee has not become final. Under such circumstances, the impugned order of termination dated 19.01.2006 solely passed on the basis of cancellation of the Community Certificate by the District Level Vigilance Committee dated 30.11.2005, signed on 20.12.2005 served on the petitioner as well as the respondent on 06.01.2006 is unsustainable as it is passed before the expiry period for filing Appeal. Hence, the writ petition is allowed with the following direction :

"The respondent is directed to reinstate the petitioner in service. The petitioner's salary and other benefits payable from 19.01.2006 till the date of reinstatement shall be subject to the orders to be passed by the State Level Caste Scrutiny Committee and if the State Level Caste Scrutiny Committee pass orders in favour of the petitioner, the petitioner will be entitled to get the backwages and other benefits during the period in which he was kept out of employment. The respondent is directed to reinstate the petitioner in service within a period of one week from the date of receipt of a copy of this order."

7. The learned counsel for the respondent submitted that the Appeal preferred by the petitioner before the State Level Caste Scrutiny Committee dated 20.03.2006 may be directed to be disposed of within a stipulated time, even though the State Level Castes Scrutiny Committee, Chennai-9, is not a party in this writ petition. Having regard to the fact that the Appeal is filed by the petitioner on 20.03.2006, the said Appeal shall be considered on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Since the State Level Caste Scrutiny Committee is not a party to this writ petition, Registry is directed to send a copy of this order to the said Committee.

8. The writ petition is allowed in the above terms. NO costs. Consequently, connected W.P.M.P. is closed.

ap

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman & Managing Director,
Chennai Port Trust,
Rajaji Salai, Chennai-1.

2. The State Level Caste Scrutiny Committee, Chennai-9.

+ 1 cc to Mr M.Jegadeesan, Advocate SR 17154
+ 1 cc to Mr M.Suresh Kumar, Advocate SR 17326

JE (CO) , CGS/7.4

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